

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN FRANK,

Plaintiff,

Case No. 2:23-cv-10261

Hon. Brandy R. McMillion

v.

MICHELLE FLOYD,

Defendant.

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**ORDER ADOPTING RECOMMENDED DISPOSITION OF REPORT AND
RECOMMENDATION (ECF No. 24) AND DENYING DEFENDANT
MICHELLE FLOYD’S MOTION FOR SUMMARY JUDGMENT ON THE
BASIS OF EXHAUSTION (ECF No. 16)**

Pro se plaintiff Kevin Tracy Frank (“Frank”), a prisoner under the jurisdiction of the Michigan Department of Corrections (“MDOC”), brings this action against defendant Michelle Floyd (“Floyd”) for violation of his Eighth Amendment rights. ECF No. 1. Frank alleges that Floyd, warden of the MDOC’s Cooper Street Correctional Facility (“JCS”) where Frank is imprisoned, displayed deliberate indifference to his physical and mental health when she failed to take action to repair the broken ventilation system of his cell block at JCS. *Id.*

On August 17, 2023, the Honorable Judith E. Levy referred all pretrial matters to Magistrate Judge Anthony P. Patti. ECF No. 12. On October 10, 2023, Floyd moved for summary judgment on the basis that Frank failed to exhaust his

administrative remedies regarding his claims against Floyd. ECF No. 16. Frank responded to the motion for summary judgment on November 3, 2023, ECF No. 18, and Floyd replied in support of her motion on November 13, 2023, ECF No. 19. The Magistrate Judge struck an unauthorized sur-reply from Frank on December 5, 2023. ECF No. 21.

On April 2, 2024, this case was reassigned from Judge Levy to the undersigned. The Court then re-referred all pretrial matters to the Magistrate Judge, including Floyd's motion for summary judgment. ECF No. 23. On April 18, 2024, the Magistrate Judge recommended that the Court deny the motion ("the R&R"). *Report and Recommendation*, ECF No. 24. At the end of the R&R, the Magistrate Judge advised the parties that to seek review of his recommendation, they had to file specific objections with the Court within 14 days of service of the R&R. *Id.* at PageID.163-64.

As of the date of this order, May 28, 2024—40 days since the Magistrate Judge filed the R&R—neither party has filed objections to the R&R or contacted the Court to ask for more time to file objections. The failure to object to an R&R releases the Court from its duty to independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also Ivey v. Wilson*, 832 F.2d 950, 957-58 (6th Cir. 1987) (explaining that a party's failure to timely object to a report and recommendation allows a court to accept the recommendation "without expressing

any views on the merits of the magistrate's conclusions"). Similarly, failure to object to an R&R forfeits any further right to appeal. *See Berkshire v. Dahl*, 928 F.3d 520, 530 (6th Cir. 2019) (recognizing that a party forfeits their right to appeal by failing to timely file objections to an R&R).

Accordingly, because neither party objected to the R&R, **IT IS HEREBY ORDERED** that the Magistrate Judge's recommended disposition of Floyd's motion is **ADOPTED**.

IT IS FURTHER ORDERED that Floyd's motion for summary judgment (ECF No. 16) is **DENIED**.

IT IS SO ORDERED.

Dated: May 28, 2024

s/Brandy R. McMillion
Brandy R. McMillion
United States District Judge